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Senate

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mr. LAUTENBERG (for himself, Mr. ROBB, Mr. SARBANES, and Ms. MIKULSKI)

S. 1486. A bill to direct the Office of Personnel Management to establish placement programs for Federal employees affected by reduction in force actions, and for other purposes.

THE PUBLIC SERVANT PRIORITY PLACEMENT ACT OF 1995

Mr. LAUTENBERG. Mr. President, I rise today with Senators ROBB, SARBANES, and MIKULSKI to introduce the Public Servant Priority Placement Act, a bill to assist Federal workers who lose their jobs as a result of downsizing. This legislation would require Government agencies to give priority consideration to these employees when filling vacancies.

Mr. President, the Federal Government is in the process of significant downsizing, and that process is likely to intensify substantially in the coming years. Under current law, 272,000 civilian positions will be eliminated by fiscal year 1999. If an agreement is reached to balance the budget, that number probably will be much larger.

Mr. President, it is easy for some to ignore the plight of these workers by talking derisively of so-called faceless bureaucrats. But all of these workers are human beings with families, bills to pay, and obligations to meet. For most, getting laid off is a painful and traumatic event. And for many, the financial implications are severe.

Most dislocated employees are hardworking, talented, skilled, and dedicated individuals who have contributed much to our Nation. They did not lose their jobs because they were lazy, or because they did poor work. They were simply innocent victims of forces larger than themselves.

Mr. President, in an effort to assist these employees, and to ensure that their talents are not lost entirely to the Government, agencies have developed their own placement programs for former employees. The most successful such program is the Department of Defense's Priority Placement Program, or PPP. Under the program, involuntarily separated workers are granted a preference when vacancies are filled. Since PPP's inception in 1965, over 100,000 DOD employees have been placed successfully elsewhere in the Department. Unfortunately, the program's placement rate has been reduced in recent years because fewer job opportunities have been available.

In coming years, few Federal agencies are likely to escape the budget axe. Some agencies probably will be eliminated altogether. It is critically important, therefore, that Congress work to ensure that all displaced workers get the support they need.

Mr. President, the Office of Personnel Management operates two governmentwide placement programs that supplement the efforts of individual agencies. Yet OPM's programs are not sufficient, in part because agencies all too often do not grant any preference to workers displaced from other agencies. According to a 1992 report by the General Accounting Office, in fiscal year 1991, OPM's programs had 4,433 registrants and made 110 placements. Although OPM has made improvements to its programs since 1992, there clearly remains a need for a coordinated, mandatory, Governmentwide placement program.

The Public Servant Priority Placement Act would direct OPM to establish such a program for RIF'd employees. It also would require agencies to institute their own intra-agency placement programs for these workers. Unlike the current placement programs, except for DOD's, agencies would be required to offer positions to dislocated workers if they are qualified.

Under this legislation, if an agency has a vacancy it cannot fill internally, such as through a promotion, it would be required to offer that position to a qualified RIF'd employee of that agency who meets certain criteria relating to classification and pay, and who is located within the same commuting area. If no such employee exists, then that agency shall offer the vacancy to a comparably-situated, well-qualified RIF'd employee from another Federal agency. Should no RIF'd employee meet these criteria, then the agency may hire a person who is outside of the Federal Government.

Mr. President, I introduced a very similar bill in the last Congress, and I am pleased that the concept has begun to attract support. A bipartisan bill was introduced a week and a half ago in the House, a component of which is almost identical to the bill we are introducing today. The Clinton administration also endorses the concept of a mandatory placement preference system.

Mr. President, I urge my colleagues to support the bill and ask unanimous consent that a copy of the legislation be included in the RECORD.

There being no objection, the bill was ordered to be printed in the RECORD, as follows:

S. 1486

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. PLACEMENT PROGRAMS FOR FEDERAL EMPLOYEES AFFECTED BY REDUCTION IN FORCE ACTIONS.

(a) SHORT TITLE.—This Act may be cited as the ''Public Servant Priority Placement Act of 1995''.

(b) IN GENERAL.—Subchapter I of chapter 33 of title 5, United States Code, is amended by adding at the end thereof the following new section:

''§ 3329b. Placement programs for Federal employees affected by reduction in force actions

''(a) For purposes of this section the term ''agency'' means an ''Executive agency'' as

● This ''bullet'' symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.

defined under section 105, except such term shall not include the General Accounting Office.

''(b) No later than 180 days after the date of the enactment of this section, the Director of the Office of Personnel Management shall establish a Government-wide program and each agency shall establish an agency program to facilitate employment placement for Federal employees who—

''(1) are scheduled to be separated from service under a reduction in force under—

''(A) regulations prescribed under section 3502; or

''(B) procedures established under section 3595; or

''(2) are separated from service under such a reduction in force.

''(c) Each agency placement program established under subsection (b) shall provide a system to require the offer of a vacant position in an agency to an employee of such agency affected by a reduction in force action, if—

''(1) the position cannot be filled within the agency;

''(2) the employee to whom the offer is made is qualified for the offered position;

''(3)(A) the classification of the offered position is equal to or no more than one grade below the classification of the employee's present or last held position; or

''(B)(i) the basic rate of pay of the offered position is equal to the basic rate of pay of the employee's present or last held position; or

''(ii) sections 5362 and 5363 apply to the basic rate of pay of the employee in the offered position; and

''(4) the geographic location of the offered position is within the commuting area of—

''(A) the residence of the employee; or

''(B) the location of the employee's present or last held position.

''(d) The Government-wide placement program established under subsection (b) shall—

''(1) coordinate with programs established by agencies for the placement of agency employees affected by a reduction in force action within such agency; and

''(2) provide a system to require the offer of a vacant position in an agency to an employee of another agency affected by a reduction in force action, if—

''(A) the vacant position cannot be filled through the placement program or otherwise be filled from within the agency in which the position is located;

''(B) the employee to whom the offer is made is well qualified for the offered position;

''(C)(i) the classification of the offered position is equal to the classification of the employee's present or last held position; or

''(ii) the basic rate of pay of the offered position is equal to the basic rate of pay of the employee's present or last held position; and

''(D) the geographic location of the offered position is within the commuting area of—

''(i) the residence of the employee; or

''(ii) the location of the employee's present or last held position.

''(e)(1) The agency placement program established under this section shall not affect any priority placement program of the Department of Defense that is in operation on the date of the enactment of this section.

''(2) The interagency placement program established under this section shall not affect the priority of placement of any employee under the agency placement program of such employee's employing agency.''.

(c) TECHNICAL AND CONFORMING AMENDMENTS.—(1) The section heading for the second section 3329 (relating to Government-wide list of vacant positions) is amended to read as follows:

''§ 3329a. Government-wide list of vacant positions''.

(2) The table of sections for chapter 33 of title 5, United States Code, is amended by striking out the item relating to the second section 3329 (relating to Government-wide list of vacant positions) and inserting in lieu thereof the following:

''3329a. Government-wide list of vacant positions.

''3329b. Placement programs for Federal employees affected by reduction in force actions.''.

By Mr. MCCAIN (for Mr. GRAMM (for himself, Mr. INOUYE, Mr. MCCAIN, Mrs. HUTCHISON, and Mr. INHOFE)):

S. 1487. A bill to establish a demonstration project to provide that the Department of Defense may receive Medicare reimbursement for health care services provided to certain Medicare-eligible covered military beneficiaries; to the Committee on Finance.

THE UNIFORMED SERVICES MEDICARE SUBVENTION DEMONSTRATION ACT OF 1995

● Mr. GRAMM. Mr. President, when we ask men and women to serve in our Nation's Armed Forces, we make them certain promises. One of the most important is the promise that, upon the retirement of those who serve 20 years or more, a graceful nation will make health care available to them for the rest of their lives. Unfortunately, for many 65-and-over military retirees, promises are being broken.

When the military's Civilian Health and Medical Program of the U.S. [CHAMPUS] was established in 1966, just 1 year after Medicare, 65-and-over military retires were excluded from CHAMPUS because it was felt they could receive care on a space-available basis from local military hospitals and they would not require health care services from the private medical community. For many years, there were few problems and plenty of available space, but as military bases and their hospitals have closed, more and more retirees are finding it increasingly difficult to receive the care they have been promised.

For many, being denied access to the local base hospital means they are completely reliant on Medicare. While Medicare is a valuable program that serves millions of Americans well, it was not designed as compensation for service to our country. Our military retirees, how-ever, have all served our Nation for a minimum of 20 years, and many for 30 years or more. With all the sacrifices they have made during their careers, I believe military retirees clearly have earned the benefits that they were promised.

While many health care options have been discussed that would appropriately reward the contributions of our military retirees, at a minimum they ought to be able to use their Medicare reimbursement eligibility wherever they choose, including the military health system. Our military treatment facilities also ought to be able to accept Medicare reimbursement and serve as Medicare providers for people who are eligible for both Medicare and for care in the military treatment system.

For this reason, today I am joined by Senators INOUYE, MCCAIN, HUTCHISON, and INHOFE in introducing a bill to establish a 2-year demonstration project that will allow Medicare to reimburse the Defense Department for health care services provided to Medicare-eligible beneficiaries who are also eligible to receive care in military treatment facilities. Called subvention. Medicare reimbursement to military treatment facilities has long been a priority of military retirees, and I believe passing this bill and getting this project under way should be a top priority for the Congress.

I am aware that some of my colleagues have also wrestled with this problem and have tried many different ways to establish a subvention program. As I introduce this bill, the Senate Armed Services Committee is working with the Pentagon and the Health Care Financing Administration [HCFA] to outline a demonstration project. In the House of Representatives, Congressman JOEL HEFLEY has introduced a bill to begin a subvention effort. While my subvention project is different than these, I believe it complements their efforts.

This program will not increase the cost to the taxpayer because it will ensure that DOD cannot shift costs to HCFA, and that the total Medicare cost to HCFA will not increase. In fact, I believe subvention could actually save money. The Retired Officers Association, in their letter to me of December 15, 1995, reports that:

Using 1995 as a baseline, the eligible Medicare population will grow by 1.6 million beneficiaries by 2000. This will increase Medicare's cost by $7.7 billion if new beneficiaries rely on Medicare as their sole source of care. But, with subvention and DOD's 7 percent discount to the Health Care Financing Administration (HCFA), the aggregate cost increase can be reduced by $361 million over that same time frame. Because health care will be managed, further savings could be realized which could be passed on by DOD to Medicare through reduced discounts.

This legislation is strongly supported by many military and veterans organizations. I would ask unanimous consent to include in the RECORD 18 statements of support from the following groups: The Retired Officers Association, National Association for Uniformed Services, Air Force Association, National Military Families Association, Veterans of Foreign Wars of the United States, The American Legion, The Retired Enlisted Association, Reserve Officers Association of the United States, Military Service Coalition of Austin (Texas), Association of the United States Army, Air Force Sergeants Association, Non Commissioned Officers Association of the United States of America, United States Army Warrant Officers Association, Chief Warrant and Warrant Officers Association United States Coast Guard, Naval

Reserve Association, Naval Enlisted Reserve Association, Association of Military Surgeons of the United States, and Jewish War Veterans of the United States of America.

There being no objection, the materials were ordered to be printed in the RECORD, as follows:

ALEXANDRIA, VA,
December 15, 1995.

Hon. PHIL GRAMM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAMM: The Retired Officers Association (TROA) with its 400,000 members (including 68,000 auxiliary members), strongly endorses your bill to authorize the Department of Defense (DoD) to test an innovative concept called Medicare subvention, which would allow Medicare to reimburse DoD for care provided to Medicare-eligible uniformed services beneficiaries through the Military Health Services System. Uniformed services retirees and their families are entitled to medical treatment in military treatment facilities (MTFs) on a ''space available'' basis. However, DoD can't afford to enroll authorized Medicare-eligible retirees in its new Tricare program and will not make available ''space available'' care for older retirees unless Congress changes the law to allow reimbursement from Medicare.

Using 1995 as a baseline, the eligible Medicare population will grow by 1.6 million beneficiaries by 2000. This will increase Medicare's cost by $7.7 billion if new beneficiaries rely on Medicare as their sole source of care. But, with subvention and DoD's 7 percent discount to the Health Care Financing Administration (HCFA), the aggregate cost increase can be reduced by $361 million over that same time frame. Because health care will be managed, further savings could be realized which could be passed on by DoD to Medicare through reduced discounts. In addition to saving money for Medicare, taxpayers and beneficiaries, subvention will:

Promote military medical readiness,

Give older retirees the freedom to choose where they would like to get their health care services, i.e., either from civilian or military sources,

Prevent retirees from being ''shoved out'' of Tricare Prime (DoD's HMO-like program) when they turn age 65,

Enable those 65 and older to choose the military managed care approach for their comprehensive, cost-effective health care, and

Allow Congress and the government to keep the life-time health care promises made to those who served.

In closing, we applaud your efforts to introduce legislation that will test the viability of subvention and its potential cost savings to the government. The potential benefits of subvention are detailed in the enclosed fact sheet.

Sincerely,

MICHAEL A. NELSON,
President.

NATIONAL ASSOCIATION
FOR UNIFORMED SERVICES
Springfield, VA, December 14, 1995.

Hon. PHIL GRAMM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAMM: I am writing to express strong support for your legislation directing the conduct of a demonstration project to authorize Medicare reimbursement to the Department of Defense and its medical facilities for care provided in military treatment facilities (MTFs) and in DoD managed care networks.

Military retirees and their families are the only federal employees who lose their employer provided health care upon reaching age 65. Although eligible to use MTFs on a space available basis, deep cutbacks in health care personnel and funding as well as hospital closures resulting from Base Realignment and Closure Commission actions have shoved hundreds of thousands of retirees out of military medicine.

Medicare eligible retirees served in WWII, Korea, Vietnam and the long Cold War. They were recruited and reenlisted by promises of lifetime medical care. Now when they need it most they are being disenfranchised. Further, DoD's TRICARE program excludes them despite the fact that these retirees earned military sponsored health care through years of arduous service and paid for Medicare through payroll deductions.

Your Medicare reimbursement legislation will allow these patriots and their families to use their Medicare benefits in military treatment facilities which will save scarce Medicare trust funds while providing the necessary funds needed for their care. Your Medicare reimbursement bill is win-win legislation for everyone—Medicare, taxpayers, beneficiaries and military medicine.

I very much appreciate your leadership on this issue and you have our full support. We are confident that this demonstration will prove the need for a permanent reimbursement program.

Sincerely,

J.C. PENNINGTON,
Major General, USA (retired),
President.

AIR FORCE ASSOCIATION,
Arlington, VA, December 15, 1995.

Hon. PHIL GRAMM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAMM: The members of the Air Force Association strongly support your legislative initiative to develop a demonstration project to authorize Medicare subvention. Medicare Subvention would provide military retirees with seamless health care coverage regardless of age.

Most military members believe they were promised, through tradition and practice, ''health care for life,'' when deciding to choose a career in the military. In the past, Medicare eligible retirees have received health care in the military treatment facilities (MTFs) on a ''space available'' basis. However, cutbacks in health care funding and medical personnel, and base hospital closures resulting from base realignment and closure, is likely to force many Medicare eligible retirees out of the military medical system.

Military retirees are the only group of retired government employees who lose their health benefit upon reaching age 65. At age 65, retirees must enroll in Medicare or continue to take the risk of receiving health care on a space available basis in the MTFs or if eligible Veterans Administration facilities. Under current law, Medicare eligible retirees cannot enroll in TRICARE unless changes are made to the Social Security Act allowing Medicare subvention.

You have the Air Force Association's full support for the Medicare subvention demonstration program.

Sincerely,

R.E. SMITH,
President.

VETERANS OF FOREIGN WARS
OF THE UNITED STATES,
Washington, DC, December 14, 1995.

Hon. PHIL GRAMM,
U.S. Senate,
Washington, DC.

DEAR SENATOR GRAMM: Thank you for taking the initiative to introduce legislation that is so important to the Veterans of Foreign Wars of the United States (VFW). Specifically, we have repeatedly sought legislation that would allow the Secretary of Health and Human Services to reimburse the Military Health Service System for care provided to Medicare-eligible military retirees and their spouses in the Military Health Service System. This inter-departmental reimbursement proposal is referred to as ''Medicare subvention''. It would improve present government health care services to taxpayers in a more cost-effective and service-efficient manner than is presently the case.

Today, more than half the 2.1 million members of the Veterans of Foreign Wars of the United States (VFW) who are eligible to receive Medicare are military retirees who fought in World War II, Korea, and/or Vietnam. Hence, they now must receive medical treatment in the civilian community or private sector at a higher cost than could be provided in a military treatment facility. To further compound this problem most VFW military retirees prefer to continue to receive their medical care in military facilities whenever and wherever possible. To make this point, at our last national convention held in August 1995 our voting delegates unanimously passed VFW Resolution No. 643 titled ''Health Care for Medicare Eligible Military Retirees.'' A copy is attached to this letter. Our position is to have Congress pass legislation that allows Medicare eligible retirees and their dependents to continue to receive the high quality of military medical service they are familiar with and are accustomed to receiving.

Thank you for your past and present efforts on behalf of all military retired veterans. They have earned military sponsored health care through past years of arduous service. Today, they are the only federal employees who lose their employer provided health care upon reaching age 65. Your proposed legislation will correct this inequity.

Sincerely,

PAUL A. SPERA,
Commander in Chief.

Attachment: as stated.

RESOLUTION NO. 643

HEALTH CARE FOR MEDICARE ELIGIBLE MILITARY RETIREES

Whereas, military retirees find it difficult to be treated at military facilities once they become eligible for Medicare since the military is not allowed to take Medicare money and hospital Commanders are reluctant to provide care for which they receive no reimbursement; and

Whereas, there is presently a bill before the House of Representatives, H.R. 861, by Congressmen Randy (Duke) Cunningham and Duncan L. Hunter that would allow military retirees and veterans to use their Medicare benefits at military or VA hospitals; and

Whereas, this would reduce the government's cost of providing health care since the government hospitals can treat these patient less expensively than paying Medicare to civilian medical facilities; now, therefore, be it

Resolved, by the Veterans of Foreign Wars of the United States, that we urge Congress to support passage of legislation that would allow military retirees and veterans to use their Medicare entitlements in military or VA hospitals.

THE AMERICAN LEGION,
Washington, DC, December 19, 1995.

Sen. PHIL GRAMM,
Committee on Appropriations, U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: The American Legion commends you for introducing and fully supports the ''Medicare Subvention Demonstration Project Act.'' This bill, which proposes a two-year demonstration program at selected sites, serves to implement an adopted American Legion mandate, namely medicare subvention or reimbursement of Department of Defense (DOD) medical facilities by the Department of Health and Human Services (DHHS) for treatment of enrolled medicare-eligible military retirees and their dependents.

Recognizably, this demonstration project legislation represents a significant first step in the direction of full-fledged medicare subvention which has been long supported by The American Legion. The goal of this effort would improve access to needed health care services for this dual-eligible population while assuring the demonstration does not increase the total federal cost of both programs. It is our aspiration that this legislation become law, and that it eventually be implemented at all military medical facilities throughout the country.

Most importantly, this bill would ease the tremendous frustration expressed by medicare-eligible military retirees and their dependents that their government has reneged in its promises of free, lifetime, heath care in exchange for decades of service to this nation in time of war and peace. Military retirees and their dependents are the only group of Federal retirees who essentially lose their health care coverage when they become 65 and are no longer eligible for CHAMPUS/TRICARE coverage. Aside from the Department of Defense itself providing health care for this group—which it states it can no longer afford—medicare subjection appears to provide the only viable solution to resolve the health care crisis experienced by this growing group of deserving veterans who have served their country for so long. Enclosed is a copy of American Legion Resolution No. 107, ''Department of Defense Health Care Reform for Military Beneficiaries,'' which supports the proposed legislation.

Military retirees have seen the promise of lifetime health care, and other promises, being broken which is not only a demoralizing factor, but one which can and will impact on recruiting and retaining a quality force if it is left unresolved. The American Legion salutes your initiative.

Sincerely,

G. MICHAEL SCHLEE,
Director National Security-Foreign Relations Division.

THE RETIRED ENLISTED ASSOCIATION,
Alexandria, VA, December 19, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM, On behalf of The Retired Enlisted Association (TREA), and its Auxiliary, I want to express our collective appreciation to you for introducing legislation that will require a demonstration project authorizing Medicare reimbursement to the Department of Defense when treating Medicare eligible military retirees seeking care from the Military Health Services System (MHSS) within the demonstration area.

Medicare eligible military retirees began their service during World War II or the Korean War and continued their service through the Cold War and the many conflicts during that era, including the Vietnam War.

Without your Medicare reimbursement legislation, too many of these dedicated American patriots would find themselves disenfranchised from the Military Health Care System despite decades of promises of health care for life from the military.

If TREA can be of assistance to you on this most important issue, please don't hesitate to contact us.

Sincerely,

JOHN M. ADAMS,
MCPO, USN (Ret.), Director for Government Affairs.

MILITARY SERVICE COALITION OF AUSTIN,
Austin, TX, December 15, 1995.

Sen. PHIL GRAMM,
Washington, DC.

DEAR SENATOR GRAMM: Our Military Service Coalition in Austin, Texas is extremely pleased with your authorship of such a balanced and unique approach to the Military Medicare Subvention debate. It is our opinion that your proposed ''Medicare Subvention Demonstration Project Act'' provides for both fiscal soundness and an operationally feasible method to test the theory and concept of Military Medicare Subvention.

Clearly, this legislation is a pragmatic alternative to other proposals that were simply too progressive, too soon. We believe that although, theoretically attractive, they were simply too far reaching and were introduced without any clear method to gain a better understanding of any potential adverse impact on both providers and customers.

Again, you and your staff are to be commended on the introduction of such a well coordinated and reasoned approach to legislative change which we believe will begin to improve our existing military health care delivery systems. We appreciate the opportunity you gave us to work closely with your staff during the development of this fine effort.

May God continue to bless your efforts to make health care more accessible to our Nation's Veterans.

Respectfully,

BRUCE CONOVER, *President.*

ASSOCIATION OF THE UNITED STATES ARMY,
Arlington, VA, December 14, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: Medicare Subvention, the reimbursement of the Department of Defense for the medical care it provides to Medicare-eligible beneficiaries, has long been a goal of the Association of the United States Army. Despite the bureaucratic resistance that often meets new ideas, Subvention continues to pass every test of fairness and logic to which it is subjected. In an age of constrained budgets and fiscal restraint, Medicare Subvention is an initiative that makes too much sense to ignore and actually holds the promise of saving money.

On behalf of the more than 100,000 members of the Association of the United States Army, thank you for your courage in confronting the bureaucratic resistance by introducing legislation to permit a demonstration of Medicare Subvention. While I believe a test is unnecessary to show that value of Subvention, the demonstration will remove any doubt that this is an initiative in which there are no losers. The Medicare-eligible military beneficiary wins. The military health care system wins. The Health Care Financing Administration wins and, in the final analysis, the American people win because a quality product will be delivered to a deserving segment of our population at a lower cost and in a more practical manner.

Medicare Subvention does not answer all the concerns we have with the military medical system, but it goes a long way to help one segment of the beneficiary population. It is an idea whose time has come. Thank you again for your willingness to sponsor a bill that will make Medicare Subvention a reality.

Sincerely,

JACK N. MERRITT,
General, USA Retired.

AIR FORCE SERGEANTS ASSOCIATION,
Temple Hills, MD, December 15, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM, On behalf of the 160,000 members of the Air force Sergeants Association, thank you for your introduction of Medicare subvention legislation before the United States Senate. Our shared concern for health care needs of our oldest military retirees will, hopefully, result in legislative action on your bill during this Congress, with the eventual goal of attaining subvention for all over-64 military retirees.

As you are aware, current law requires that over-65, Medicare-eligible military retirees be thrown out of formal participation in the Military Health Services System (MHSS) simply because they have attained that age and status. For many, this effectively ends their care possibilities within the MHSS, because ''space-available'' care in Military Treatment Facilities is increasingly difficult to obtain.

Most other federal employees keep their federal health insurance upon reaching age 65. Therefore, the current practice toward over-65 military retirees is discriminatory and must end. The full-scale enactment of Medicare subvention could result in the ability of many of our older military retirees to participate in DOD's new health care program, TRICARE. Your efforts to begin the process are needed and appreciated. As always, feel free to ask for AFSA's support of this or any other legislation of mutual concern.

Sincerely,

JAMES D. STATION,
Executive Director.

NON COMMISSIONED OFFICERS ASSOCIATION OF THE UNITED STATES OF AMERICA,
Alexandria, VA, December 15, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: The Non Commissioned Officers Association of the USA (NCOA) wishes to express strong support for your efforts to introduce legislation directing that a demonstration project be conducted to authorize Medicare reimbursement to the Department of Defense (DoD) for medical care provided in Military Treatment Facilities (MTFs) and in the department's managed care networks. It is very important that your bill include TRICARE and the Uniformed Services Treatment Facilities in the demonstration.

NCOA and it's members are very concerned that the efforts of DoD to improve health care availability and accessibility through implementation of the TRICARE program for all military beneficiaries are being hampered simply because Medicare will not reimburse DoD for the medical treatment provided to the age-65 military retiree. NCOA cannot just standby and watch a group of military retirees who earned a free lifetime medical care benefit be disenfranchised from that benefit.

In this regard, NCOA applauds your efforts and supports your legislation.

Sincerely,

MICHAEL F. OUELLETTE,
Sgt Maj, US Army, (Ret), Director of Legislative Affairs.

NATIONAL MILITARY
FAMILY ASSOCIATION,
Alexandria, VA, December 14, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: The National Military Family Association supports your legislation providing for a demonstration project to authorize Medicare reimbursement to the Department of Defense and its medical facilities for care provided in military treatment facilities (MTFs) and in DoD managed care networks. The bill includes TRICARE and the Uniformed Services Treatment Facilities in the demonstration.

Military retirees and their families are the only federal employees who lose their employer provided health care upon reaching age 65. Although eligible to use MTFs on a space available basis, deep cutbacks in health care personnel and funding as well as hospital closures resulting from Base Realignment and Closure Commission actions have shoved hundreds of thousands of retirees out of military medicine.

Medicare eligible retirees served in WWII, Korea, Vietnam and the long Cold War. They were recruited and reenlisted by promises of lifetime medical care. Now when they need it most they are being disenfranchised. DoD's TRICARE program excludes them despite the fact that these retirees earned military sponsored health care through years of arduous service and paid for Medicare through payroll deductions.

NMFA is aware that Medicare reimbursement to DoD will only benefit those living in areas where MTFs exist and/or TRICARE Prime is available and continues to support offering all non-active duty military beneficiaries the option of enrolling in the Federal Employees Health Benefit Plan. Nonetheless, Medicare reimbursement to DoD will benefit many who would otherwise lose access to the military system.

Sincerely,

SYLVIA E.J. KIDD,
President.

RESERVE OFFICERS ASSOCIATION
OF THE UNITED STATES,
Washington, DC, December 18, 1995.

Hon. PHIL GRAMM,
U.S. Senate Washington, DC.

DEAR SENATOR GRAMM: I write to you today on behalf of the more than 100,000 members of the Reserve Officers Association, an organization chartered by Congress to "support a military policy for the United States that will provide adequate national security. . . ." ROA strongly supports your legislation directing the conduct of a demonstration project to authorize Medicare reimbursement to the Department of Defense and its medical facilities for care provided in military treatment facilities (MTFs) and in DoD managed care networks. The bill includes TRICARE and the Uniformed Services Treatment Facilities in the demonstration.

Military retirees and their families are the only federal employees who lose their employer provided health care upon reaching age 65. Although military retirees are entitled to use MTFs on a space available basis, deep cutbacks in health care personnel and funding as well as hospital closures resulting from Base Realignment and Closure Commission actions will shove hundreds of thousands of them out of military medicine.

Medicare-eligible retirees served in WWII, Korea, Vietnam and the long Cold War. When they were recruited and reenlisted they were promised lifetime medical care. Now when they need it most they are being disenfranchised. Further, DoD TRICARE program excludes them despite the fact that these retirees earned military sponsored health care through years of arduous service and paid for Medicare through payroll deductions.

Your Medicare reimbursement legislation will allow these patriots and their families to use their Medicare benefits in military treatment facilities which will save scarce Medicare trust funds while providing the necessary funds needed for their care. Your Medicare reimbursement bill is win-win legislation for everyone—Medicare, taxpayers, beneficiaries and military medicine.

You have our association's full support for this important legislation. I am sure that this demonstration will prove the need for a permanent reimbursement program.

Sincerely,

ROGER E. SANDLER,
Major General, AUS (Ret.)
Executive Director.

JEWISH WAR VETERANS OF THE
UNITED STATES OF AMERICA,
December 14, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: I am writing to express strong support for your legislation directing the conduct of a demonstration project to authorize Medicare reimbursement to the Department of Defense and its medical facilities for care provided in military treatment facilities (MTFs) and in DOD managed care networks. The bill includes TRICARE and the Uniformed Services Treatment Facilities in the demonstration.

Military retirees and their families are the only federal employees who lose their employer provided health care upon reaching age 65. Although eligible to use MTFs on a space available basis, deep cutbacks in health care personnel and funding as well as hospital closures resulting from Base Realignment and Closure Commission actions have shoved hundreds of thousands of retirees out of military medicine.

Medicare eligible retirees served in WWII, Korea, Vietnam and the long Cold War. They were recruited and reenlisted by promises of lifetime medical care. Now when they need it most they are being disenfranchised. Further, DOD's TRICARE program excludes them despite the fact that these retirees earned military sponsored health care through years of arduous service and paid for Medicare through payroll deductions.

Your Medicare reimbursement legislation will allow these patriots and their families to use their Medicare benefits in military treatment facilities which will save scarce medicare trust funds while providing the necessary funds needed for their care. Your Medicare reimbursement bill is win-win legislation for everyone—Medicare, taxpayers, beneficiaries and military medicine.

You have our full support for this legislation. I am sure that this demonstration will prove the need for a permanent reimbursement program.

Sincerely,

NEIL GOLDMAN,
National Commander.

U.S. ARMY
WARRANT OFFICERS ASSOCIATION,
December 15, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: On behalf of the United States Army Warrant Officers Association (USAWOA) I am writing to express strong support for your legislation directing the conduct of a demonstration project to authorize Medicare reimbursement to the Department of Defense and its medical facilities for care provided in military treatment facilities (MTFs) and in DOD managed care networks.

Military retirees and their families are the only federal employees who lose their employer provided health care upon reaching age 65. Although eligible to use MTFs on a space available basis, deep cutbacks in health care personnel and funding as well as hospital closures resulting from Base Realignment and Closure Commission actions have excluded hundreds of thousands of retirees from military medicine.

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Your Medicare reimbursement legislation will allow these patriots and their families to use their Medicare benefits in military treatment facilities which will save scarce medicare benefits in military treatment facilities while providing the necessary funds needed for their care.

Your leadership in initiating this important legislation is appreciated. We are confident that this demonstration will prove the need for a permanent reimbursement program.

Sincerely,

DON HESS,
CW4, USA,
Executive Vice President.

USCG, CHIEF WARRANT AND
WARRANT OFFICERS ASSOCIATION,
Washington, DC, December 15, 1995.

Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: I am writing to express strong support for your legislation directing the conduct of a demonstration project to authorize Medicare reimbursement to the Department of Defense and its medical facilities for care provided in military treatment facilities (MTFs) and in DoD managed care networks. The bill includes, Tricare and the Uniformed Services Treatment Facilities in the demonstration.

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Your Medicare reimbursement legislation will allow these patriots and their families to use their Medicare benefits in military treatment facilities which will save scarce Medicare trust funds while providing the necessary funds needed for their care. Your Medicare reimbursement bill is win-win legislation for everyone—Medicare, taxpayers, beneficiaries and military medicine.

You have our full support for this legislation. I am sure that this demonstration will prove the need for a permanent reimbursement program.

Sincerely,

ROBERT L. LEWIS,
Executive Director.

NAVAL ENLISTED RESERVE ASSOCIATION,
Falls Church, VA, December 14, 1995.
Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: I am writing to express NERA's strong support for your legislation directing the conduct of a demonstration project to authorize Medicare reimbursement to the Department of Defense and its medical facilities for care provided in military treatment facilities and in DoD managed care networks. The bill includes TRICARE and the Uniformed Services Treatment Facilities in the demonstration.

Military retirees and their families are the only federal employees who lose their employer provided health care upon reaching age 65. Although eligible to use MTFs on a space available basis, deep cutbacks in health care personnel and funding as well as hospital closures resulting from Base Realignment and Closure Commission actions have shoved hundreds of thousands of retirees out of military medicine.

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Your Medicare reimbursement legislation will allow these patriots and their families to use their Medicare benefits in military treatment facilities which will save scarce Medicare trust funds while providing the necessary funds needed for their care. Your Medicare reimbursement bill is win-win legislation for Medicare, taxpayer, beneficiaries and military medicine.

You have our full support for this legislation. I am sure that this demonstration will prove the need for a permanent reimbursement program.

Sincerely,

EDDIE OCA,
National President.

NAVAL RESERVE ASSOCIATION,
Alexandria, VA, 15 December 1995.
Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: I am writing to express strong support for legislation directing the conduct of a demonstration project to authorize Medicare reimbursement to the Department of Defense and its medical facilities for care provided in military treatment facilities (MTFs) and in DoD managed care networks. The bill include TRICARE and the Uniformed Services Treatment Facilities in the demonstration.

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You have our full support for this legislation.

Sincerely,

JAMES E. FOREREST

ASSOCIATION OF MILITARY SURGEONS
OF THE UNITED STATES,
Bethesda, MD, December 15, 1995.
Hon. PHIL GRAMM,
U.S. Senate, Washington, DC.

DEAR SENATOR GRAMM: I am writing to express strong support for your legislation directing the conduct of a demonstration project to authorize Medicare reimbursement in the Department of Defense and its medical facilities for care provided in military treatment facilities (MTFs) and in DoD managed care networks. The bill includes TRICARE and the Uniformed Services Treatment Facilities in the demonstration.

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You have our full support for this legislation. I am sure that this demonstration will prove the need for a permanent reimbursement program.

Sincerely,

MAX B. BRALLIAR,
LT General, USAF, MC Ret.
Executive Director.●

●Mr. MCCAIN. Mr. President, today I am cosponsoring with Senator PHIL GRAMM the Uniformed Services Medicare Subvention Demonstration Act, this bill would allow Medicare reimbursement to the Department of Defense for care provided by the military system to Medicare-eligible uniformed services beneficiaries.

In the case of those Medicare-eligible uniform services beneficiaries who enroll in the Department's managed health care plan, Tricare, this legislation would authorize a demonstration project that allows Medicare to pay DOD based on a reduced rate per enrollee of 93 percent from what Medicare pays eligible health maintenance organizations. In the case of DOD beneficiaries who do not enroll in Tricare, Medicare would pay military treatment facilities [MTFs] for services provided based on the methodology it would use in paying a discounted rate of 93 percent of what Medicare pays a similar civilian provider.

Under current law, DOD retirees may receive care free of charge at a MTF on a space available basis. There are currently about 1.2 million uniformed services beneficiaries age 65 and older. By 1997, this number is expected to grow to 1.4 million. It is estimated that 97 percent of these retirees are eligible for Medicare. An estimated 324,000 of these individuals currently use military health care facilities on a regular basis when space is available, at a cost of $1.4 billion per year from DOD's annual appropriation. Due to budgetary considerations, DOD soon will no longer have the resources to treat Medicare-eligible beneficiaries unless it is able to obtain Medicare reimbursement.

For military retirees, the cost of care provided through civilian providers in the Medicare Program is significantly higher than if the care is provided at a military hospital. One study by DOD found that the cost of care at a military hospital is 10–24 percent less. Such savings are further supported by a GAO study of six hospitals in which estimated savings to the CHAMPUS Program ranged from $18 to $21 million. With Medicare reimbursement, DOD will be able to treat more Medicare-eligible beneficiaries at lower cost to the Government.

There would be substantial benefits to our military readiness associated with this legislation. Under this demonstraion project, the readiness of the military health care system would be enhanced in two significant ways. First, military treatment facilities would be able to maintain their service capacity despite DOD budgetary restrictions due to the infusion of Medicare funds. Second, DOD physicians and other military health care personnel will be able to treat the broad range of medicare problems presented by retired beneficiaries, thereby assisting them to maintain and expand their knowledge and skills.

Even more important, this legislation is important to overall military personnel readiness. Particularly in times of conflict, our Armed Forces depend heavily on the high quality of career mid-level and senior management. We must therefore continue to attract such personnel to serve full military careers, often comprising 30 years of service and sacrifice. Offering an attractive retirement benefits package, including military health care during retirement, and keeping our Government's promises concerning such benefits, is essential to maintaining these key personnel.

I believe that this bill is at least budget neutral and will save the Government money. It will seek a reduced reimbursement from Medicare only for

new beneficiaries who otherwise obtain care through Medicare within the Civilian sector. DOD concludes that subvention will reduce Government costs. Allowing Medicare reimbursements for DOD health care has been a long standing proposal. This bill would allow us to demonstrate the initiative on a limited basis to ensure that it provides the promised benefits to Medicare recipients who are retired uniform service beneficiaries, to Department of Defense's health care system and to the Medicare trust fund. I hope it is a demonstration we can implement to increase success for broader application.

Mr. President, this bill is important to the military, its retires and the Nation. The military needs to maintain its readiness and its ability to provide the best care possible. Retirees who have served their careers in our uniformed services, and who have also paid into the Medicare trust fund like other Medicare beneficiaries, deserve the full range of choice that this legislation offers. They should be able to use their Medicare coverage wherever they are eligible to receive care, including a military treatment facility or the Tricare Program.

This legislation is supported in principal by the Department of Defense and fully by all the uniformed services organizations and the major veterans organizations, including the entire military coalition. Additionally, the Senate has already taken a positive position on Medicare subvention when it earlier this year passed a sense-of-the-Senate resolution in the Defense authorization bill. I am proud to be part of an effort with Senator PHIL GRAMM to continue to move forward on this important legislation for military service members and their families.

Again, this legislation should provide the catalyst to demonstrate that, in fact, those career uniformed service members continue to have options in terms of health care and allows them to continue to be able to choose their health care provider like most Americans. For the active service member and their families they will continue to enjoy the highest quality health care that is our duty to provide.●

By Mr. SARBANES:

S. 1488. A bill to convert certain excepted service positions in the U.S. Fire Administration to competitive service positions, and for other purposes; to the Committee on Governmental Affairs.

U.S. FIRE ADMINISTRATION LEGISLATION

● Mr. SARBANES. Mr. President, today I am introducing legislation to convert eight remaining excepted service positions at the U.S. Fire Administration to competitive service status.

During its first few years of operation, the Federal Emergency Management Agency used an excepted service authority provided under the Fire Prevention and Control Act of 1974 in order to quickly staff the National Fire Academy with personnel who were uniquely qualified in fire education.

In the early 1980's, after the Academy's original vacancies had been filled and the Academy was up and running, it became FEMA's policy to fill openings at the NFA through a competitive civil service hiring system. Today, 91 of the NFA's 99 employees are under the general schedule with only eight employees who were hired in the 1970's and early eighties remaining in excepted service status. As a result, these remaining eight are subject to significant limitations within the USFA. Although they each average over 17 years of Federal service and were hired solely because of their strong backgrounds and unique qualifications in fire education, they are legally barred from competing for management positions within the Fire Administration. The remaining eight excepted service employees are not even allowed to serve on details to competitive service jobs—even within their own organization—without an official waiver from the Office of Personnel Management.

Mr. President, I am proposing to remedy this situation. The legislation which I am introducing will enable the Director of the Federal Emergency Management Agency and the Director of the Office of Personnel Management to convert any employees appointed to the Fire Administration under the Federal Fire Protection and Control Act, to competitive service—without any break in service, diminution of service, reduction of cumulative years of service, or requirement to serve any additional probationary period with the Administration. Those converted under this legislation shall also remain in the Civil Service Retirement System and retain their seniority. This practice is consistent with other federally supported training academies. The Congressional Budget Office has indicated that there would be no cost for this conversion, and I urge my colleagues to join me in support of this legislation.●

By Mrs. MURRAY:

S. 1489. A bill to amend the Wild and Scenic Rivers Act to designate a portion of the Columbia River as a recreational river, and for other purposes; to the Committee on Energy and Natural Resources.

COLUMBIA RIVER BASIN LEGISLATION

● Mrs. MURRAY. Mr. President, I am introducing legislation today to designate the 50-miles of the mid-Columbia River known as the Hanford Reach—the last free-flowing stretch of the river—a wild and scenic river and to improve fish and wildlife habitat downstream of the reach.

Although I have been working for less than a year with the community and members of my Hanford Reach Advisory Panel to develop a broadly-supported means of protecting the river corridor, the effort to save the reach has been underway for 30 years.

The Hanford Reach is an issue whose time has come.

While most of the Columbia River Basin was being developed during the middle of this century, the Hanford Reach and other buffer areas within the Hanford Nuclear Reservation were kept pristine, ironically, by the same veil of secrecy and security that lead to the notorious nuclear and chemical contamination of the central Hanford site. Today, these relatively undisturbed Hanford buffer areas are wild remnants of a great river and vast shrub-steppe ecosystem that have been tamed by dams, farms, and other economically important development.

As the last free-flowing stretch of the Columbia between the Canadian border and Bonneville Dam, the significance of the Hanford Reach has only recently become fully appreciated. Mile for mile, it contains some of the most productive and important fish spawning habitat in the lower 48 States. The cool, clear waters of the Columbia River that sweep through the reach have the volume and velocity to produce ideal conditions for spawning and migrating salmon. The reach produces 80 percent of the Columbia Basin's fall chinook salmon, as well as thriving runs of steelhead trout and sturgeon. It is the only truly healthy segment of the mainstem of the Columbia River.

At a time when the Pacific Northwest is struggling to restore declining salmon runs—and spending hundreds of millions annually on restoration and enhancement efforts—protecting the Hanford Reach is the most cost-effective step we can take. That is why the Northwest Power Planning Council, Trout Unlimited, conservation groups, tribes, and many other regional interests involved in the salmon controversy support designation of the reach under the National Wild and Scenic Rivers Act.

The reach is also rich in other natural and cultural resources. Bald eagles, wintering and migrating waterfowl, deer elk, and a diversity of other wildlife depend on the reach. It is home to dozens of rare, threatened, and endangered plants and animals, some found only in the reach.

This part of the Columbia Basin is also of great cultural importance. Native American culture thrived on the shores and islands of the reach for millennia, and there are over 150 archaeological sites in the proposed designation, some dating back more than 10,000 years. The reach's naturally-spawning salmon and cultural sites remain a vital part of the culture and religion of Native American groups in the area.

The southern shore of the reach chronicles a different kind of history: the story of the Manhattan project and defense nuclear production during the cold war. Nowhere else in the world is there a higher concentration of nuclear facilities, some of which are on the National Register of Historic Places, than along this stretch of the Columbia River.

In stark contrast to the old defense reactors is the section of the reach

dominated by the White Bluffs, whose towering but fragile cliffs offer dramatic scenery and opportunities for solitude. Irrigation water flowing through unstable Ringold formation sediments has caused part of the White Bluffs to slide into the River, smothering spawning beds, reducing water quality, and even deflecting the course of the river. This constitutes one of the great threats to the reach.

The reach offers residents and visitors recreation of many types—from hunting, fishing, and hiking to kayaking, waterskiing, and bird-watching—and adds greatly to the quality of life and economy of the area.

My legislation builds on a foundation begun in the 100th Congress by Senators Dan Evans and Brock Adams, and Congressman Sid Morrison, who enacted legislation which called for a moratorium on development within the river corridor and a detailed study of policy options. Our bill implements the preferred alternative of the Hanford Reach EIS, which recommended Congress designate the reach a recreational river under the National Wild and Scenic Rivers Act.

With the guidance of my Hanford Reach Advisory Panel, the legislation also contains some refinements and protections. For example, the bill explicitly allows current activities, such as agriculture, power generation and transmission, and water withdrawals along the river corridor to continue. It excludes private property, which comprises only about three percent of the study area. The legislation also guarantees that local government and other local interests have a formal role in the management of the river corridor, which will come under the jurisdiction of the U.S. Fish and Wildlife Service.

The legislation also includes provisions which complement the Wild and Scenic River designation. The Secretary of Interior and relevant Federal agencies are directed to work with local and State sponsors in developing a program of education and interpretation related to the Hanford Reach. The city of Richland and area tribes, among others, have been working with the Department of Energy on a museum and regional visitor center proposal and are eager to make the natural and human history of the reach part of the project. Federal agencies should help coordinate with local sponsors on this initiative.

There is also great interest in the tri-cities, and among some government agencies, in improving the habitat value, access, and appearance of the Columbia River shoreline in the area, much of which is lined with high, steep levees that were put into place before the network of Columbia River dams controlled the flow of the River and reduced the need for such flood control structures. Migrating salmon and wildlife now face a sterile gauntlet, populated by predatory fish species, in this part of the River.

This bill directs the Army Corps of Engineers, which built, owns, and maintains the levees, to coordinate with local sponsors on demonstration projects to restore the rivershore. In the short-term, the bill directs the corps to undertake some small levee modification projects under their existing Section 1135 Project Restoration Program, assuming the local sponsors meet program requirements for planning and cost-sharing. The cities of Kennewick and Pasco, and the Port of Kennewick, have already indicated an interest and ability to pursue this course of action. In the long-term, the corps is directed to undertake a comprehensive study of the levees and determine if rivershore restoration in the area is feasible and an important Federal priority.

I am proud of the way this legislation was developed. It is the product of an open, consensus-building process that heard from virtually every interested group in the community and in the region. The bill was drafted with the assistance of a diverse panel of community leaders from local government, business, labor, and the conservation community.

I am deeply grateful to the members of my Hanford Reach Advisory Panel for their public spirited commitment of their valuable time, energy, and creativity. Sue Frost, manager of the Port of Kennewick; Chris Jensen, Pacso City Council; Joe King, Richland City Manager; Rick Leaumont with the Lower Columbia Basin Audubon Society; John Lindsay, president of TRIDEC; Kris Watkins with the Tri-Cities' Visitor and Convention Bureau; and Jim Watts with the Oil, Chemical and Atomic Workers did an outstanding job tackling the tough issues associated with this legislation and developing a consensus proposal.

I look forward to working with my colleagues in the Senate to enact this historic and balanced measure.●

By Mr. SIMON (for himself, Mr. JEFFORDS, Mr. LEAHY, and Mrs. BOXER):

S. 1490. A bill to amend title I of the Employee Retirement Income Security Act of 1974 to improve enforcement of such title and benefit security for participants by adding certain provisions with respect to the auditing of employee benefit plans, and for other purposes; to the Committee on Labor and Human Resources.

THE PENSION AUDIT IMPROVEMENT ACT OF 1995

Mr. SIMON. Mr. President, Senator JEFFORDS and I are introducing the Pension Audit Improvement Act of 1995 today in order to improve the quality of audits performed pursuant to the Employee Retirement Income Security Act of 1974 [ERISA]. The bill repeals the limited scope audit exemption, enhances ERISA auditor qualifications, and requires speedy reporting of serious ERISA violations discovered during plan audits.

Over the past few years, both the Inspector General of the Department of Labor and the GAO have issued reports documenting the need to strengthen the quality of pension audits. Recent investigations by Secretary Reich of 401(k) plans further demonstrate the need for Congress to Act promptly on this measure.

I want to commend Senator JEFFORDS for his interest and work in support of this bill. I also want to commend Secretary Reich for the Department's substantial work and effort in support of this bill. I am also pleased to report that this bill is supported by the American Institute of Certified Public Accountants, and I thank them for their efforts to move this bill forward. I ask unanimous consent to have a summary of the bill printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PENSION AUDIT IMPROVEMENT ACT OF 1995

CURRENT LAW

Title I of the Employee Retirement Income Security Act of 1974 (ERISA), requires that pension plan administrators obtain a financial audit of employee benefit pension plans. ERISA's audit requirement was designed to protect employee benefit plan assets and assist the Labor Department's enforcement activities by insuring the integrity of financial and compliance information disclosed on the annual report filed with the government.

Under current law, plan auditors are permitted to exclude plan assets invested in regulated institutions, such as banks or insurance companies, from the annual audit. This exclusion, referred to as a limited-scope audit, prohibits auditors from rendering an opinion on the plan's financial statements in accordance with professional auditing standards. Consequently, there is no assurance that plan assets are secure. About fifty percent of plan audit reports contain a limited scope audit disclaimer, resulting in approximately $950 billion dollars in pension plan assets that are not subject to a full financial audit.

Federal law enforcement agencies including, the Office of the Inspector General of the Department of Labor, the General Accounting Office (GAO) and the Pension and Welfare Benefits Administration of the Department of Labor have found that current ERISA audits do not consistently meet professional standards, therefore, hundreds of millions of dollars in pension funds are not being adequately audited.

MAJOR PROVISIONS OF THE PENSION AUDIT IMPROVEMENT ACT OF 1995

The Pension Audit Improvement Act is designed to improve the integrity of private audits of employee pension plan benefits to better protect retirees and active workers future retirement income. In order to insure that pension funds are adequately safeguarded, this bill repeals the limited scope audit exception, enhances ERISA auditor qualifications, and requires speedy reporting of serious ERISA violations discovered during plan audits.

1. Repeal of limited scope audits

The bill repeals the limited-scope audit. Limited scope audits were originally designed to exempt institutions that were already examined by federal or state agencies from duplicative detailed audits. The Inspector General of the Department of Labor, has found, however, that a significant number of these financial institutions are not audited annually increasing risks to plan participants of inadequate retirement security.

Eliminating the limited scope audit will not require that the plan's accountant duplicate the work of a bank or insurance company audit. It is expected that the ERISA plan auditors will rely on the reports of the financial institution, meeting certain certified public accounting standards, which speak to the reliability of that audit. This ''single audit'' approach would fulfill the purposes of the audit requirement without imposing the additional cost of independently reviewing the financial institution's records. At the same time, accountants will now be able to issue audit reports that provide employees the assurance that their retirement income is secure.

2. Reporting and enforcement requirements for pension plans

a. Prompt reporting of serious violations

ERISA's current reporting rules create a time lag between the detection of a reportable event and the filing of the annual report which increases the risk to plan participants and beneficiaries that full recoveries will not be made. This audit bill requires faster reporting duties on auditors who discover serious violations or whose services are terminated by the employer client. This provision should substantially enhance ERISA enforcement because the Department of Labor will receive notices of violations from plan auditors, up to eighteen months, before the Department currently receives this information.

The new reporting rules apply only to the most egregious violations like theft, embezzlement, bribery or kickbacks. The primary reporting obligation remains with the plan administrator. Auditors report serious violations directly to the Labor Department only if the administrator fails to notify within a specific time frame.

b. Auditor termination

The bill also requires a pension plan that terminates an accountant to promptly notify the Secretary of Labor. The plan's notice must specify the reasons for termination, and a copy of the notice must be sent to the accountant.

c. Penalty for failure to report

The bill provides a civil penalty of up to $100,000 against any accountant or pension plan that violates the reporting requirement. A violation could also result in criminal sanctions.

3. Enhanced qualifications for ERISA plan auditors

The Department of Labor reports that it ''continues to detect substantial auditing work'' by ERISA auditors. This bill creates a peer review and continuing professional education requirement for ERISA plan auditors. The bill also gives the Secretary of Labor regulatory authority to insure the quality of plan audits.

The bill requires that qualified public accountants participate in an external quality peer review relevant to employee benefit plans within a three year period prior to conducting an ERISA audit. This review must meet recognized auditing standards as determined by the Comptroller General of the United States. The bill also requires that qualified public accountants performing ERISA plan audits satisfy specific continuing education requirements.

4. Clarification of fiduciary penalties

The bill provides the Secretary of Labor the discretion to reduce the current civil penalties (the penalty is an amount equal to 20% of amount recovered pursuant to a settlement agreement for breach of fiduciary duty). The Secretary has determined that the automatic penalty disadvantages plan participants because it serves as a ''disincentive'' for parties to settle with the Department.

The bill also clarifies that ERISA's anti-alienation rule, which protects pensions from third party creditors, does not protect fiduciaries who breach ERISA and cause a loss to the plan. The bill clarifies that ERISA does not prohibit a plan from offsetting a fiduciary's, or criminal wrongdoer's pension benefits when such person causes a loss to the plan.

Mr. JEFFORDS. Mr. President, I rise today with my good friend and colleague, Senator SIMON, to introduce the Pension Audit Improvement Act of 1995. I'd also like to thank the Department of Labor and the American Institute of Certified Public Accountants who have worked very closely with us to produce this bill.

The primary purpose of this legislation is to repeal the limited scope audit exception currently in the Employee Retirement Income Security Act [ERISA]. Similar bills have been introduced by my colleagues Senators KASSEBAUM and HATCH in previous years. The current bill has the added feature of putting some teeth into private auditor enforcement efforts and responsibilities.

Limited scope audits are audits where independent accountants are not required to examine, test, or evaluate funds or assets held in trust by banks or other regulated financial institutions. This provision in ERISA has created a major loophole in the oversight of pension plans. While the assumption is that these institutions are adequately audited by federal agencies, these audits are generally done only once every two years. More significantly, when an independent auditor is restricted from examining significant information in an audit, she generally disclaims any opinion about whether that plan's financial statements are correct.

Workers and retirees have the right to except that somebody is making sure that their pensions are there when they retire. The sheer numbers of private pension plans over 900,000, make it virtually impossible for the government to possibly maintain a viable enforcement effort without the help of private plan auditors. Also, is it realistic to expect an accountant, who has continuing ties with an employer, to identify and report to the Department of Labor questionable transactions between the plan and plan sponsor?

The current enforcement system incorrectly assumes, to a large degree, that independent public accountants will detect serious violations in a timely manner. A 1987 report, by the Department of Labor's Office of Inspector General found that in 71% of their reviews, that the independent auditors had failed to discover existing ERISA violations. In a more recent 1989 report, the Inspector General found large numbers of audits didn't adequately examine or test plan assets and lacked timely reporting of ERISA violations.

Furthermore, these studies indicate a number of problems with the detection of potential ERISA violations, including: incomplete or inadequate information being reported, the ability of the government to examine only about one percent of these plans per year, and that private plan audits do not consistently meet generally accepted professional accounting standards.

The intent of the Pension Audit Improvement Act is to increase the overall integrity of private pension plan auditing enforcement practices. To enhance the integrity of audits this bill will subject qualified public accountants to external peer review. In addition, public accountants performing ERISA audits will be required to satisfy continuing education requirements emphasizing employee benefits ERISA rules.

In addition, this bill will place new, expedited reporting duties on auditors whose services are terminated by the plan administrator before the audit is completed and, for those auditors who discover evidence of serious violations such as theft, embezzlement, bribery or kickbacks. Auditors will be required to report these violations directly to the Department of Labor only if the administrator fails to notify the Department within a specified time frame. The primary reporting, of any violation, still remains with the plan sponsor.

I look forward to working with all interested parties in turning this bill into a first step toward strengthening our current pension enforcement system. Although, these changes to ERISA's reporting rules may seem minor they have the potential to create lasting reform with respect to the enforcement of Title I of ERISA. Giving private sector auditors the tools and responsibility of early detection of violations will prevent workers from losing hard earned pension benefits.

We simply must do a better job of safeguarding the pension benefits of a growing number of workers and pensioners. The economic security of tens of millions of Americans depends on these benefits being adequately protected.

By Mr. GRAMS (for himself, Mr HEFLIN, Mr. PRYOR, Mr. MCCONNELL, Mr. CONRAD, Mr. COVERDELL, and Mr. SANTORUM):

S. 1491. A bill to reform antimicrobial pesticide registration, and for other purposes; to the Committee on Agriculture, Nutrition, and Forestry.

ANTI-MICROBIAL LEGISLATION

Mr. GRAMS. Mr. President, I rise today to introduce bipartisan legislation reforming the burdensome regulatory process for pesticide approvals under the Federal Insecticide, Fungicide, and Rodenticide Act.

I am pleased to say that my legislation achieves that goal while preserving and improving upon our Nation's public health.

This legislation is a product of compromise between the affected industry

and the Environmental Protection Agency.

The spirit of bipartisanship is best exemplified by the list of my colleagues joining me in this effort, including Senator HEFLIN, Senator PRYOR, Senator MCCONNELL, Senator CONRAD, Senator COVERDELL and Senator SANTORUM.

As members of the Agriculture Committee, their support for this commonsense legislation is essential and appreciated.

Mr. President, Congress has finally begun to recognize the severe burdens we place upon America's job creators when we impose regulatory legislation without respect to its cost or ultimate benefits.

So I am pleased that we have made significant progress this year in reforming and reducing some of that regulatory burden, and I believe this legislation takes us another step forward.

The pesticides covered by this legislation, called antimicrobial products, include common household disinfectant cleaners, bleaches, sanitizers, and disinfectants.

Antimicrobials play an important and beneficial role in controlling disease and in maintaining a high public-health standard in hospitals, nursing homes, clinics, schools, hotels, restaurants, and even in our own homes.

Because emergency workers rely on antimicrobial pesticides to disinfect contaminated water supplies, they are especially valuable during times of natural disasters, such as flooding in the Midwest, hurricanes in Florida, and earthquakes in California.

Yet despite the critical role antimicrobials play in maintaining public health, and the efforts of our colleagues to develop a responsible solution, there have been significant and unintended delays on the EPA's part in approving these products for use.

Unfortunately, those delays in the registration process have stifled the ability of the industry to market new products—products which could have an even more significant impact on the public health.

I would like to share an example.

A new product which provides extraordinary effectiveness against a powerful form of bacteria was developed by an international supplier of cleaning and sanitizing products.

Not only was this new product found to be extremely effective, but it was also developed to break down rapidly once it had achieved its sanitizing work. In short, it effectively helped destroy bacteria while it reduced the likelihood of environmental damage.

While this revolutionary product had proven merits, the company could not get the product approved by the EPA for over 2 years because of the cumbersome approval process.

At the end of that 2-year period, the EPA granted its approval and agreed that this product was of great importance to public health and the environment. It's unfortunate that it has taken so long for the Government to recognize what its manufacturer had long known.

Such examples have become commonplace. Because of this inappropriate backlog of anti-microbial applications pending within the EPA that have little or no chance of being resolved within a reasonable period of time, the need for legislative reform is clear.

Our legislation will establish process for expediting the review of anti-microbial products.

It incorporates predictability into the system without compromising public health and safety. it encourages industry and Government to work together to actually improve products which can better guarantee our public health.

In a legislative climate that is too often partisan and uncompromising, this bill is an example of how Congress, the administration and its Federal agencies, industry, and consumers can pool their efforts to achieve a common end.

Again, I thank my colleagues who have cosponsored this bill, the anti-microbial industry, user groups, and the EPA for coming together to work out the details of this bill. I urge the rest of my colleagues to join us in supporting this commonsense reform.

ADDITIONAL COSPONSORS

S. 607

At the request of Mr. WARNER, the name of the Senator from Michigan [Mr. ABRAHAM] was added as a cosponsor of S. 607, a bill to amend the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 to clarify the liability of certain recycling transactions, and for other purposes.

S. 984

At the request of Mr. GRASSLEY, the name of the Senator from Kansas [Mr. DOLE] was added as a cosponsor of S. 984, a bill to protect the fundamental right of a parent to direct the upbringing of a child, and for other purposes.

S. 1183

At the request of Mr. HATFIELD, the name of the Senator from Illinois [Mr. SIMON] was added as a cosponsor of S. 1183, a bill to amend the act of March 3, 1931 (known as the Davis-Bacon Act), to revise the standards for coverage under the act, and for other purposes.

S. 1379

At the request of Mr. THOMAS, his name was added as a cosponsor of S. 1379, a bill to make technical amendments to the Fair Debt Collection Practices Act, and for other purposes.

S. 1386

At the request of Mr. BURNS, the name of the Senator from Mississippi [Mr. COCHRAN] was added as a cosponsor of S. 1386, a bill to provide for soft-metric conversion, and for other purposes.

S. 1400

At the request of Mrs. KASSEBAUM, the name of the Senator from Iowa [Mr. GRASSLEY] was added as a cosponsor of S. 1400, a bill to require the Secretary of Labor to issue guidance as to the application of the Employee Retirement Income Security Act of 1974 to insurance company general accounts.

S. 1419

At the request of Mrs. KASSEBAUM, the name of the Senator from New York [Mr. D'AMATO] was added as a cosponsor of S. 1419, a bill to impose sanctions against Nigeria.

SENATE CONCURRENT RESOLUTION 25

At the request of Ms. SNOWE, the name of the Senator from Connecticut [Mr. DODD] was added as a cosponsor of Senate Concurrent Resolution 25, a concurrent resolution concerning the protection and continued viability of the Eastern Orthodox Ecumenical Patriarchate.

AMENDMENTS SUBMITTED

WHITEWATER SUBPOENA RESOLUTION

D'AMATO AMENDMENTS NOS. 3101–3103

Mr. D'AMATO proposed three amendments to the resolution (S. Res. 199) directing the Senate Legal Counsel to bring a civil action to enforce a subpoena of the Special Committee to Investigate Whitewater Development Corporation and Related Matters to William H. Kennedy, III; as follows:

AMENDMENT NO. 3101

The first section of the resolution is amended by striking ''subpoena and order'' and inserting ''subpoenas and orders''.

AMENDMENT NO. 3102

After the sixth Whereas clause in the preamble insert the following:

''Whereas on December 15, 1995, the Special Committee authorized the issuance of a second subpoena duces tecum to William H. Kennedy, III, directing him to produce the identical documents to the Special Committee by 12:00 p.m. on December 18, 1995;

''Whereas on December 18, 1995, counsel for Mr. Kennedy notified the Special Committee that, based upon the instructions of the White House Counsel's Office and personal counsel for President and Mrs. Clinton, Mr. Kennedy would not comply with the second subpoena;

''Whereas, on December 18, 1995, the chairman of the Special Committee announced that he was overruling the legal objections to the second subpoena for the same reasons as for the first subpoena, and ordered and directed that Mr. Kennedy comply with the second subpoena by 3:00 p.m. on December 18, 1995;

''Whereas Mr. Kennedy has refused to comply with the Special Committee's second subpoena as ordered and directed by the chairman;''.

Amend the title so as to read: ''Resolution directing the Senate Legal Counsel to bring a civil action to enforce subpoenas and orders of the Special Committee to Investigate Whitewater Development Corporation and Related Matters to William H. Kennedy, III.''